IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23035 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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BHAVANBHAI BABUBHAI ZALA - Petitioner(s)

Versus

COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :
MR RAKESH B SHARMA for Petitioner(s) : 1,MR SJ BHARADIYA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 25/01/2006

ORAL JUDGMENT

1.Bhavanbhai Babubhai Zala, petitioner-detenu has filed this habeas corpus petition under Article 226 of the

Constitution of India challenging the order of detention dated 15/10/2005 passed by the Police Commissioner, Ahmedabad under the provisions of PASA Act. Petition was filed on 25/11/2005. On 29/11/2005, this Court (Coram:K.M.Mehta, J.) has issued rule which was returnable on 26/12/2005. On behalf of respondent, Mr.L.R.Pujari, learned APP appears, therefore, with consent of parties, matter has been placed for final hearing to this Court.

2. Ms.Banna Dutta, learned advocate for the petitioner has invited my attention to the detention order dated 15/10/2005 passed by the detaining authority under the provisions of PASA Act. She has also invited my attention to the committal order dated 15/10/2005 passed by the detaining authority by which the petitioner-detenu was sent to Porbander jail on the same day. She has also invited my attention to the grounds furnished by the detaining authority to the petitioner-detenu on the same day i.e. on 15/10/2005 for detaining the petitioner-detenu in this behalf. In the grounds, it has been alleged that the petitioner-detenu has committed two offences which are as under:

1. Offence committed under jurisdiction of Odhav Police Station in connection with Criminal Case No.5151 of 2005 dated 27/7/2005 under the provisions of Section 66(1)(B), 65(A)(E), 85(1)(3) and 81 of the Prohibition Act. It was alleged that petitioner was storing 20 liters of country liquor.

2. Offence committed under jurisdiction of Odhav Police Station in connection with Criminal Case No.5194 of 2005 dated 10/10/2005 under the provisions of Section 66(B), 65(E), 81 and 83 of the Prohibition Act. It was alleged that petitioner was storing 350 liters of country liquor.

3.It was further alleged that petitioner is carrying anti social activities as carrying on business of liquor and therefore he is falling within the meaning of 'bootlegger' under the provisions of PASA Act. His illegal activities affect the public health and public order and therefore, the authority has passed detention order and detained the petitioner detenu under the provisions of the PASA Act.

4.The learned advocate for the petitioner stated that

there are only two incidents and mere activities of bootlegging and registration of two offences under the Prohibition Act is not sufficient to pass an order of detention. It will not be detrimental to the public order. There may be only detrimental to the law and order situation. In support of the same, the learned advocate has relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta, judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000 and judgment of the Division Bench of this Court (Coram:C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of Ashokbhai Jivrajbhai v. Police Commissioner, reported in 2000 (1) GLR 816. The learned counsel has further submitted that the authority ought to consider that the activities of the petitioner violating the public health but the authority must consider the report of chemical examination or FSL in which the country made liquor be tested and it must be alleged that it is injurious to public health. The said fact is not stated in the record.

5.On the other hand, on behalf of respondent, Mr.L.R.Pujari, learned APP appears. He has tried to support the order of detention on the basis of grounds stated in the order of detention and affidavit filed by the authority.

6.I have considered relevant materials in this behalf. In this case, there is no link between the offence committed by the petitioner-detenu towards the breach of the PASA Act. The authority has failed to exercise the jurisdictional powers. There may be only breach of law and order but not public order. In that connection, the learned advocate for the petitioner-detenu has relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta, judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000 and judgment of the Division Bench of this Court (Coram:C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of Ashokbhai Jivrajbhai v. Police Commissioner, reported in 2000 (1) GLR 816.

7.Having heard the learned counsel for both the parties,

in my considered view, the detaining authority has passed the order of detention without there being any credible and cogent material in this behalf. Contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and Division Bench Judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in the case of Ashokbhai Balabhai Makwana and another division bench judgment of this Court (C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of Ashokbhai Jivrajbhai (supra). And therefore, the order of detention is required to be quashed and set aside.

8. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal case alone cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crime. There has to be nexus and link for such activities which disturb the public order. The activities of the detenu must in the

backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgment of the Supreme Court in Piyush Kantilal Mehta (supra), judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000, judgment of the Division Bench of this Court in the case of Ashokbhai Jivrajbhai (supra) and judgment of this Court (Coram:K.M.Mehta, J) in Special Civil Application No.20420 of 2005 decided on 15/11/2005, in my view, it cannot be said that the activities of the detenu are prejudicial to the public order. Therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

9.I have considered the facts and circumstances of the case in view of the submissions made by the learned counsel for the petitioner, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra)

and judgment in Letters Patent Appeal (supra) and other judgments cited by the petitioner. Considering all these, I am of the view that the activities of the petitioner may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

10.In the result, petition is allowed. I hereby quash and set aside the order of detention. Bhavanbhai Babubhai Zala, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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